

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 15 2002

In the Matter of)
)
Amendment of Section 73.622(b),)
Table of Allotments,)
Digital Television Broadcasting Stations.)
(Spokane, Washington))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 02-222
RM-10491

To: Chief, Video Services Division

REPLY COMMENTS OF KHQ, INCORPORATED

KHQ, Incorporated ("KHQ"), licensee of KHQ-TV, Spokane, Washington, and television translator K48DX, operating on channel 48 and licensed to serve Sandpoint, Idaho, by its attorneys, files these reply comments to respond to an error in the comments filed September 30, 2002 by KSKN Television, Inc. ("KSKN"), permittee of KSKN-DT, and to place on record notice of a relevant proceeding opened after comments were filed in this matter.

The Commission's Notice of Proposed Rule Making in the above-cited docket' proposed the substitution in Spokane of DTV channel 48 for channel 36 as requested by KSKN. In its comments, KSKN stated its intention to apply for DTV channel 48, if the Digital Table of Allotments is modified to make that channel available, in order to increase its power to achieve parity in the Spokane market.

¹ DA 02-1912, Released August 9, 2002.

KSKN made the incorrect statement that its Petition for Rulemaking of January 25, 2002 "demonstrates that operation of KSKN-DT on Channel 48 will have no adverse interference effects on any low power television or Class A television facilities." In fact, the petition made no such demonstration, nor could it have. A full-power DTV station in Spokane would be devastating to a co-channel low-power TV translator in Sandpoint, Idaho. In its comments of September 30, 2002, KHQ brought to the Commission's attention the fact that allocating DTV channel 48 to Spokane would force the termination of its translator operations on channel 48 in Sandpoint, which would result in the loss of a broadcast service to approximately 14,000 persons.

In its Petition for Rulemaking, KSKN stated that its request for this channel change was due to the presence of KUID-DT on Channel 35 in Moscow, Idaho. In its comments KHQ demonstrated that this change was unnecessary because the Commission had granted the licensee of KUID-DT, the Idaho State Board of Education (the "Board"), Special Temporary Authorizations ("STAs") to switch its digital and analog channel allocations, operate KUID-DT on channel 12, and use channel 35 for KUID-TV at a much lower power.

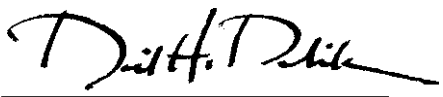
² KSKN Comments, September 30, 2002, p. 2.

After the date for filing comments in this proceeding, the Commission issued a Notice of Proposed Rule Making ("NPRM") to change the analog and digital tables of allotments on a permanent basis, consistent with the Board's STAs.³ The NPRM proposes an analog allocation for Moscow with carrier frequency offset 10kHz below channel 35. With this change and the power level proposed by the Board for its operation of KUID-TV, KSKN should be able to increase its power at its present allocation of channel 36 without a change that would result in the loss of service to 14,000 persons.

³ Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations: and Section 73.622(b), Table of Allotments, Digital Broadcast Television Stations. (Moscow, Idaho), MB Docket No. 02-315, RM-10566, DA 02-2504 (Released October 9, 2002) (copy attached).

Accordingly, KHQ respectfully requests that the Commission leave the Digital Table of Allotments for Spokane as it is and terminate this proceeding.

KHQ, INCORPORATED

By: 

John C. Quale

David H. Pawlik

of

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1440 New York Avenue, N.W.

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Its attorneys


Date: October 15, 2002

CERTIFICATE OF SERVICE

I, Katherine M. Kline, hereby certify that I have this 15th day of October, 2002, mailed by Federal Express, a copy of the "Reply Comments of KHQ, Incorporated" to the following:

James R. Bayes
Wiley, Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

Counsel to KSKN Television, **Inc.**


Katherine M. Kline

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|---|---|----------------------|
| |) | |
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.606(b), |) | MB Docket No. 02-315 |
| Table of Allotments, |) | RM-10566 |
| Television Broadcast Stations; and |) | |
| Section 73.622(b), Table of Allotments, |) | |
| Digital Broadcast Television Stations. |) | |
| (Moscow, Idaho) |) | |

Released: October 9, 2002

Reply Comment Date: December 17,2002

1. The Commission has before it a petition for rule making filed by the State Board of Education, State of Idaho, (“Idaho PTV”), licensee of noncommercial television station KUID-TV, channel *12- and permittee of noncommercial DTV station KUID-DT, channel *35, both licensed to serve Moscow, Idaho. Idaho PTV requests the exchange of KUID’s analog and digital allotments at Moscow.

2. Idaho PTV states that it is proposing to make an early change to the channel it plans to use as its permanent DTV channel by exchanging its analog and DTV channels. Idaho PTV contends that if it were forced to build its DTV facilities twice, such duplicative construction would be a waste of the resources available to Idaho PTV as a noncommercial broadcaster. This channel exchange, according to Idaho PTV, will also result in enormous cost savings for electric power. Idaho PTV estimates that the funds saved in the area of both construction and operation would be in the range of \$1 million. These funds, it states, could be used to enhance the educational programming offered by Idaho PTV. Idaho PTV further states that operating on DTV channel * 12 will encourage viewers to purchase DTV receivers, which it believes will facilitate the provision of more DTV programming.

3. We believe Idaho PTV's proposal warrants consideration. TV Channel *35 can be substituted for TV Channel *12- at Moscow with a minus offset consistent with Sections 73.610 and

73.611 of the Commission's Rules.¹ DTV channel *12 can be substituted for DTV channel *35 at Moscow, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 46-40-54 N. and 116-58-13 W. Since the community of Moscow is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for these allotments. In addition, we find that this DTV channel change is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2). We propose to substitute DTV Channel *12 for DTV Channel *35 for station KUID-DT at Moscow with the following specifications:

| | | | |
|-----------|-----|-------|-------|
| | | | |
| ID Moscow | *12 | 128.5 | 339.7 |

4. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u> | <u>Present</u> | <u>Channel No.</u> <u>Proposed</u> |
|---------------|----------------|---------------------------------------|
| Moscow, Idaho | *12- | *35- |

5. Additionally, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u> | <u>Present</u> | <u>Channel No.</u> <u>Proposed</u> |
|---------------|----------------|---------------------------------------|
| Moscow, Idaho | *35 | *12 |

6. The Commission's authority to institute rule-making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before December 2, 2002, and reply comments on or before December 17, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the

¹ The coordinates for channel *35 are North Latitude 46-41-07 and West Longitude 116-50-34

petitioner, or its counsel or consultant, as follows:

Anne Goodwin Crump
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(Counsel for State Board of Education, State of Idaho)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) and 73.622(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

9. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.). The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See Electronic Filing of Documents in Rule Making Proceedings, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal

Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location **are** 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.